

PLAINTIFF'S COMPLAINT

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3
4 **PARTIES**

5 6. Plaintiff is a natural person residing in Avon, New Jersey, 07717.

6 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7 8. Defendant is a national debt collection company with corporate headquarters
8 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
10 and repeatedly contacted Plaintiff in an attempt to collect a debt.

11 10. Defendant acted through its agents, employees, officers, members, directors,
12 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

13
14
15 **PRELIMINARY STATEMENT**

16 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
17 which prohibits a catalog of activities in connection with the collection of debts by third parties.
18 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
19 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
20 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
21 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
22 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
23 unconscionable conduct, both generally and in a specific list of disapproved practices.

1 12. In particular, the FDCPA broadly enumerates several practices considered
2 contrary to its stated purpose, and forbids debt collectors from taking such action. The
3 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
4 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
5 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
6 collector may not use any false, deceptive, or misleading representation or means in connection
7 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
8 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
9 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
10 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
11 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
12 connection with the collection of a debt.
13

14 13. In enacting the FDCPA, the United States Congress found that “[t]here is
15 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
16 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
17 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
18 additionally found existing laws and procedures for redressing debt collection injuries to be
19 inadequate to protect consumers. 15 U.S.C. § 1692b.
20

21 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
22 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
23 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
24 collection practices are not competitively disadvantaged, and to promote consistent State action
25 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

FACTUAL ALLEGATIONS

15. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

16. The alleged debt at issue arose out of transactions, which were primarily for personal, family, or household purposes.

17. Prior and up until March 2011, Defendant, its agents, employees, and servants, engaged in debt collection activities seeking payment from Plaintiff.

18. Defendant and its employees harassed Plaintiff by making continuous calls to her cellular telephone number and home telephone number.

19. Defendant placed repeated calls to Plaintiff's cellular phone almost every day, causing Plaintiff to receive, at times, more than two (2) collection calls a day.

20. Defendant placed repeated calls to Plaintiff's cellular phone almost every day, causing Plaintiff to receive, at times, more than twenty (20) collection calls a month.

21. On March 6, 2011, Defendant sent Plaintiff a letter, seeking and demanding payment on behalf of Bank of America, N.A. for a debt alleged to be owed in the amount of \$442.61. See Exhibit A, Defendant's March 6, 2011, letter to Plaintiff.

22. Defendant represented that it had been retained to collect an account, but then went on to threaten; "if you choose not to respond to this notification, we will assign your account to a collector with instructions to collect the balance." See Exhibit A.

23. Defendant's letter is misleading and deceptive, as Defendant is a collection company.

24. Defendant's requirement that Plaintiff must respond to its letter to avoid further

1 collection activities overshadows Plaintiff's right to dispute the debt and/or request verification
 2 of the alleged debt by making Plaintiff feel that she had no other recourse than to contact
 3 Defendant to pay the alleged debt.

4 25. Defendant's actions in attempting to collect the alleged debt were harassing,
 5 abusive and highly deceptive.
 6

7 CONSTRUCTION OF APPLICABLE LAW

8 26. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &
 9 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer
 10 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.
 11 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
 12 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
 13 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).
 14

15 27. The FDCPA is a remedial statute, and therefore must be construed liberally in
 16 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
 17 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
 18 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
 19 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
 20 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
 21 2002).
 22

23 28. The FDCPA is to be interpreted in accordance with the "least sophisticated"
 24 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
 25 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,

1 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for
 2 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
 3 and the fact that a false statement may be obviously false to those who are trained and
 4 experienced does not change its character, nor take away its power to deceive others less
 5 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it
 6 ensures protection of all consumers, even naive and trusting, against deceptive collection
 7 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
 8 collection notices. Clomon, 988 F. 2d at 1318.

10
 11 **COUNT I**
 12 **DEFENDANT VIOLATED**
 13 **THE FAIR DEBT COLLECTION PRACTICES ACT**

14 29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
 15 more of the following ways:

- 16 a. Defendant violated of the FDCPA generally;
- 17 b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in
 18 connection with the collection of an alleged debt;
- 19 c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's
 20 telephone to ring repeatedly or continuously with the intent to harass, annoy
 21 or abuse Plaintiff;
- 22 d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
 23 misleading representations or means in connection with the collection of a
 24 debt;
- 25 e. Defendant violated § 1692e(10) of the FDCPA by using false representations

1 or deceptive means to collect or attempt to collect a debt;

2 f. Defendant violated § 1692f of the FDCPA by using unfair and
3 unconscionable means with Plaintiff to collect or attempt to collect a debt;

4 g. Defendant violated § 1692g of the FDCPA by engaging in collection
5 activities during the 30-day period that overshadow or are inconsistent with
6 the disclosure of the Plaintiff's right to dispute the debt or request the name
7 and address of the original creditor; and

8 h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
9 and failed to comply with the FDCPA.
10

11
12 WHEREFORE, Plaintiff, CHRISTINA APICELLI, respectfully pray for a judgment as
13 follows:

14 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
15 1692k(a)(1);

16 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
17 15 U.S.C. § 1692k(a)(2)(A);

18 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
19 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and

20 d. Any other relief deemed appropriate by this Honorable Court.
21

22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, CHRISTINA APICELLI, demands a jury trial
24 in this case.
25

RESPECTFULLY SUBMITTED

DATED: 05/13/11

KIMMEL & SILVERMAN, P.C..

By: 

Amy L. Bennecoff

Attorney ID # 202745

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

Phone: (215) 540-8888

Fax: (877) 788-2864

Email: abennecoff@creditlaw.com